

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

LIONEL GUSTAFSON et al.,)
)
Plaintiffs,)
)
V.) CIVIL ACTION NO.
)
ADRIAN JOHNS, et al.,)
)
Defendants,)
)
SETH HAMMETT, LOWELL BARRON)
and HANK SANDERS,)
)
Defendants-Intervenors.

**DEFENDANT-INTERVENOR HAMMETT'S
MOTION TO DISMISS**

Defendant-intervenor Seth Hammett, through undersigned counsel, pursuant to Rule 12(b)(6), Fed.R.Civ.P., moves that this action be dismissed. As grounds for his motion, and as is more fully set out in the brief supporting this motion, Defendant-intervenor Hammett would show as follows:

1. The claims asserted in the amended complaint in this action have already been adjudicated in at least two prior cases, *Montiel v. Davis*, 215 F.Supp.2d 1279

(S.D. Ala. 2002) (3-judge court), and *Rice v. English*, 835 So.2d 157 (Ala. 2002), and are barred by res judicata and collateral estoppel.

2. The amended complaint fails to state a claim upon which relief can be granted.
3. The claims in the amended complaint are barred by the doctrine of laches.

WHEREFORE, defendant-intervenor Hammett prays that this action be dismissed.

Respectfully submitted this 30th day of September, 2005,

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CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2005, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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